IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.589/2005

Pawan Jaggi ..... Petitioner
! through: Mr. Sudhanshu Batra, Advocate &
Mr. Bhuvan Guglani, Advocate

VERSUS

$ State & Ors. ..... Respondents
^ through: Mr. Harish Gulati and Mr. Rohit
Sharma, Advocates for CBI
Mr. Pawan Sharma, Advocate for the
State.

% **D**ATE OF DECISION: 17-09-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.(Oral)

1. Petitioner seeks quashing of RC-S15-2001-S0007 dated 12.11.2001 alleging that a settlement has been arrived at with the complainant bank.

2. Relevant facts are that on 9.4.2001 Shri S.K.Widhani, then Chief Manager of Allahabad Bank, Parliament Street addressed a complaint to the Superintendent of Police and CBI informing that Seasons Creation Pvt. Ltd. of which petitioner was the Chairman-cum-Director had availed of certain credit facilities from bank. That on 29.5.1998 the company was sanctioned a

packing credit facility in sum of Rs.71 lacs, an ad-hoc packing credit Rs.9 lacs, bank guarantee facility in sum of Rs.12 lacs and a short term loan Rs.5.65 lacs. It was stated in the complaint that principal document which had induced the bank in granting aforesaid facilities was an export order purportedly issued by M/s.J.C. Penny Purchasing Corporation addressed to the company as per which 36500 pieces of garments valued at US$2,00,750 was in the hand of the company. According to the complainant said purchase order was found to be a fake document and the company M/s.J.C. Penny Purchasing Corporation had not placed any such order.

3. It was further stated in the complaint that after availing the credit facilities, the directors of the company, including the petitioner disposed of all assets of the company. Nothing was found at the unit of the company at WZ-271 Shakarpur, Delhi-110034. It was also stated in the complaint that without the consent of the bank, hypothecated machinery etc. furnished as collateral securities was liquidated.

4. It is urged by learned counsel for the petitioner that since bank had settled the dispute with the petitioner and has received under one time settlement all dues of the bank and has agreed to withdraw the allegations against the petitioner and the company, no useful purpose would be served in continuing with the criminal prosecution against the petitioner.

5. I note that on the allegations made by the bank against the petitioner and co-accused, prosecution has been launched for offences under Section 420/469/468/471/120-B IPC.

6. No doubt inherent powers of the Court can be exercised to quash even non-compoundable offences but the said power has to be exercised sparingly and whenever facts exist warranting exercise of said power.

7. In relation to economic offences, a distinction can be made as follows:-

(a) Category 1 – Where a wholly civil transaction takes colour of criminal offences and civil dispute is settled between the parties.

(b) Category 2 – Where the foundation of the civil transaction is found to be rested on false and fabricated documents and the civil litigation between the parties is settled.

8. In my opinion, difference in the 2 categories would be that in the former i.e. category – 1 substratum of facts constituting the civil as well as criminal dispute would be the same. If parties have sorted out the civil dispute and desire to the Court that criminal prosecution be permitted to be compounded, being a civil offence against an individual, compounding would be welcomed by the Court.

9. But, where the foundation of the civil transaction is a

criminal act i.e. forgery of a document resulting in the opposite party, under inducement, entering into a civil transaction, in my opinion, in said circumstances mere settlement between the parties may not be a ground to quash a prosecution.

10. In the instant case, complainant Allahabad Bank, is a public sector bank. It is the custodian of public funds. Merely because the company and its directors, under a one-time settlement have paid dues to the bank and the bank has consented for compounding of the offences, in my opinion, would not entitle the petitioner to the exercise of the power by this Court under Section 482 Code of Criminal Procedure 1973.

11. Noting the gravement of the allegations in the complaint of the bank against the petitioner and other co-accused, taking note of the decision of the Supreme Court reported as 2002 (2) Crimes 192 (SC), *Inspector of Police, CBI vs. B.Raja Gopal & Ors.*, the petition is dismissed.

12. Needless to state, nothing stated in the present order would be treated as a conclusive finding by the learned Trial Judge. Issue would be decided in view of the evidence led.

September 17, 2007 **PRADEEP NANDRAJOG, J.**
dk